

1 JAMES W. BRODY (CA SBN 212967)
2 *jbrody@americanmlg.com*
3 CHRISTIAN J. MARTINEZ (CA SBN 215360)
4 *cmartinez@americanmlg.com*
5 AMERICAN MORTGAGE LAW GROUP, P.C.
6 75 Rowland Way, Suite 350
7 Novato, California, 94945
8 Telephone: (415)878-0030
9 Facsimile: (415)878-0035
10
11 *Attorneys for Defendant,*
12 *A.K.T. American Capital*

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 FEDERAL DEPOSIT INSURANCE
14 CORPORATION as Receiver for
AMTRUST BANK,

15 Plaintiff,

16 v.

17 A.K.T. AMERICAN CAPITAL, INC.,
18 a California corporation,

19 Defendant.
20

Case No. 2:15-cv-09363-ODW-E

**ANSWER OF DEFENDANT A.K.T.
AMERICAN CAPITAL, INC. TO
PLAINTIFF'S COMPLAINT**

DEMAND FOR JURY TRIAL

21 Defendant A.K.T. AMERICAN CAPITAL, INC. (hereinafter "American
22 Capital"), by and through its undersigned counsel, and for its Answer to the
23 Complaint herein, states as follows:
24

25 **SPECIFIC ADMISSIONS AND DENIALS**

26 With respect to the specific allegations of Plaintiff Federal Deposit Insurance
27 Corporation, as Receiver for AmTrust Bank ("Plaintiff"), in its Complaint:
28

INTRODUCTION

1
2
3 1. American Capital admits that Plaintiff purports to bring this action
4 based on alleged agreements as set forth in Paragraph 1, but denies that any such
5 alleged agreements were breached by American Capital. American Capital admits
6 that it sold or transferred mortgage loans to AmTrust Bank, formerly known as Ohio
7 Savings Bank (“AmTrust”). American Capital denies the remaining allegations set
8 forth in Paragraph 1.
9

10 2. American Capital denies that it breached any representations and
11 warranties in the agreements as set forth in Paragraph 2, and denies that Plaintiff is
12 entitled to the relief therein requested.
13

JURISDICTION AND VENUE

14
15
16 3. American Capital has insufficient knowledge or information to form a
17 belief about the truth of the allegations made in Paragraph 3 and on that basis
18 denies those allegations.
19

20 4. American Capital has insufficient knowledge or information to form a
21 belief about the truth of the allegations made in Paragraph 4 and on that basis
22 denies those allegations.
23

24 5. American Capital admits that the Federal Deposit Insurance
25 Corporation (“FDIC”) is a corporation and instrumentality of the United States
26 established under the Federal Deposit Insurance Act and is authorized to be
27 appointed as receiver for failed insured depository institutions. American Capital
28

1 has insufficient knowledge or information to form a belief about the truth of the
2 remaining allegations made in Paragraph 5 and on that basis denies those
3 allegations.
4

5 6. American Capital admits Plaintiff's allegations in Paragraph 6 that
6 American Capital is a California corporation with its principal place of business in
7 El Segundo, California, and is a company engaged in the business of processing,
8 packaging, selling, brokering, originating, transferring and/or servicing loans
9 secured by real property.
10

11 7. American Capital lacks knowledge or information sufficient to form a
12 belief about the truth of the allegations made in Paragraph 7 of the Complaint, and
13 on that basis denies them.
14

15 8. American Capital lacks knowledge or information sufficient to form a
16 belief about the truth of the allegations made in Paragraph 8 of the Complaint, and
17 on that basis denies them.
18

19 9. American Capital lacks knowledge or information sufficient to form a
20 belief about the truth of the allegations made in Paragraph 9 of the Complaint, and
21 on that basis denies them.
22

23 10. American Capital lacks knowledge or information sufficient to form a
24 belief about the truth of the allegations made in Paragraph 10 of the Complaint, and
25 on that basis denies them.
26

27 11. American Capital lacks knowledge or information sufficient to form a
28

1 belief about the truth of the allegations made in Paragraph 11 of the Complaint, and
2 on that basis denies them.

3
4 **FIRST CLAIM FOR RELIEF**

5 **BREACH OF CONTRACT FOR BRISKIN LOAN**

6 12. American Capital re-alleges its responses in the preceding paragraphs
7 as though fully set forth herein.

8
9 13. American Capital lacks knowledge or information sufficient to form a
10 belief about the truth of the allegations made in Paragraph 13 of the Complaint, and
11 on that basis denies them.

12
13 14. American Capital lacks knowledge or information sufficient to form a
14 belief about the truth of the allegations made in Paragraph 14 of the Complaint, and
15 on that basis denies them.

16
17 15. American Capital denies the allegations set forth in Paragraph 15 of
18 the Complaint.

19
20 16. American Capital lacks knowledge or information sufficient to form a
21 belief about the truth of the allegations made in Paragraph 16 of the Complaint, and
22 on that basis denies them.

23
24 17. American Capital lacks knowledge or information sufficient to form a
25 belief about the truth of the allegations made in Paragraph 17 of the Complaint, and
26 on that basis denies them.

27
28 18. American Capital lacks knowledge or information sufficient to form a

1 belief about the truth of the allegations made in Paragraph 18 of the Complaint, and
2 on that basis denies them.

3
4 19. American Capital lacks knowledge or information sufficient to form a
5 belief about the truth of the allegations made in Paragraph 19 of the Complaint, and
6 on that basis denies them.

7
8 **SECOND CLAIM FOR RELIEF**

9 **BREACH OF CONTRACT FOR HARVEY LOAN**

10 20. American Capital re-alleges its responses in the preceding paragraphs
11 as though fully set forth herein.

12
13 21. American Capital lacks knowledge or information sufficient to form a
14 belief about the truth of the allegations made in Paragraph 21 of the Complaint, and
15 on that basis denies them.

16
17 22. American Capital lacks knowledge or information sufficient to form a
18 belief about the truth of the allegations made in Paragraph 22 of the Complaint, and
19 on that basis denies them.

20
21 23. American Capital denies the allegations set forth in Paragraph 23 of
22 the Complaint.

23
24 24. American Capital lacks knowledge or information sufficient to form a
25 belief about the truth of the allegations made in Paragraph 24 of the Complaint, and
26 on that basis denies them.

27
28 25. American Capital lacks knowledge or information sufficient to form a

1 belief about the truth of the allegations made in Paragraph 25 of the Complaint, and
2 on that basis denies them.

3
4 26. American Capital denies the allegations set forth in Paragraph 26 of
5 the Complaint.

6
7 27. American Capital lacks knowledge or information sufficient to form a
8 belief about the truth of the allegations made in Paragraph 27 of the Complaint, and
9 on that basis denies them.

10
11 28. American Capital lacks knowledge or information sufficient to form a
12 belief about the truth of the allegations made in Paragraph 28 of the Complaint, and
13 on that basis denies them.

14
15 **AFFIRMATIVE DEFENSES**

16 Further answering and as affirmative defenses to the allegations contained in
17 Plaintiff's Claims for Relief, American Capital states:

18
19 **First Affirmative Defense - Failure to State a Claim**

20 The Complaint in its entirety and each and every cause of action therein fails
21 to allege facts sufficient to constitute a cause of action against American Capital.

22
23 **Second Affirmative Defense – Failure to Mitigate Damages**

24 American Capital alleges that if Plaintiff has sustained, or will sustain, any of
25 the injuries, losses, or damages described in the Complaint, which American
26 Capital denies, then such injuries, losses, or damages were caused solely or in part
27 by the failure of Plaintiff to take reasonable steps available to mitigate such
28

1 damages, and to the extent that any such injuries, losses, or damages proven by
2 Plaintiff were caused by Plaintiff's own failure to take reasonable steps available to
3 mitigate such damages, shall not be recoverable against American Capital.
4

5 **Third Affirmative Defense – Lack of Causation/Intervening Cause**

6 American Capital alleges that if Plaintiff sustained any injuries, losses, or
7 damages, such injuries, losses, or damages were the result of an intervening cause
8 of another or other parties unknown, acting without authority from American
9 Capital and not from any negligence, fault, breach of duty, or statutory violation by
10 American Capital.
11
12

13 **Fourth Affirmative Defense – Lack of Causation**

14 American Capital alleges that the alleged unlawful acts, omissions, and/or
15 breaches attributed to American Capital in the Complaint, if any there were, were
16 not a substantial factor in bringing about the alleged injuries, losses, or damages to
17 Plaintiff and therefore any such alleged misconduct was not a contributing cause
18 but was superseded by tortious misconduct by one or more third parties whose
19 misconduct was the proximate cause of any alleged injuries, losses, or damages
20 suffered.
21
22
23

24 **Fifth Affirmative Defense - Waiver**

25 American Capital alleges that Plaintiff has waived and is estopped from
26 asserting any claim against American Capital by its own acts or omissions with
27 respect to the events and/or omissions cited in the Complaint and its failure to
28

1 adequately protect its own interests.

2 **Sixth Affirmative Defense – Proximate Cause**

3
4 American Capital denies that Plaintiff has suffered any injuries, losses, or
5 damages whatsoever as a proximate result of the acts of American Capital.

6 **Seventh Affirmative Defense – Defendant’s Due Care**

7
8 American Capital alleges that Plaintiff is barred from recovery because
9 American Capital’s conduct was, at all relevant times, within the applicable
10 standard of care.

11 **Eighth Affirmative Defense – Defendant’s Good Faith**

12
13 American Capital alleges that at all relevant times it acted with utmost good
14 faith and full disclosure.

15 **Ninth Affirmative Defense – Statute of Limitations**

16
17 The Complaint, and each alleged cause of action therein, is barred by the
18 applicable statutes of limitation.

19 **Tenth Affirmative Defense – Set-off**

20
21 American Capital alleges that Plaintiff’s claims are subject to set-off and
22 recoupment.

23 **Eleventh Affirmative Defense - Indemnification**

24
25 Should Plaintiff recover damages from American Capital, American Capital
26 is entitled to indemnification and/or contribution, either in whole or in part, from
27 any and all other persons or entities whose conduct may be found to be the
28

1 proximate cause of the damages alleged by Plaintiff, if any exist.

2 **Twelfth Affirmative Defense – Failure to Add Necessary Parties**

3
4 Plaintiff has failed to join necessary and indispensable parties to this action.

5 **Thirteenth Affirmative Defense – Plaintiff Not Damaged**

6 Plaintiff has not suffered any actual damages, the existence of which is
7 denied.
8

9 **Fourteenth Affirmative Defense – Plaintiff's Breach**

10 American Capital is informed and believes and on the basis of such
11 information and belief alleges that Plaintiff breached its contract, if any there was,
12 with American Capital, and that by reason of said breach of contract, American
13 Capital has been excused of its duties to perform all obligations set forth in said
14 contract.
15
16

17 **PRAYER FOR RELIEF**

18 WHEREFORE, American Capital prays as follows:
19

- 20 1. That Plaintiff take nothing by reason of its Complaint and that
21 judgment be rendered in favor of American Capital;
22
23 2. That American Capital be awarded its costs of suit incurred in defense
24 of this action, including attorney's fees where allowed by law; and
25
26 3. For such other relief as the Court deems just and proper.

27 **DEMAND FOR JURY TRIAL**

28 American Capital demands a trial by jury of all issues so triable.

1 Dated: March 17, 2016

2 **AMERICAN MORTGAGE LAW**
3 **GROUP, P.C.**

4
5 By /s/ James W. Brody

6 James W. Brody, Esq.

7 *jbrody@americanmlg.com*

8 Christian J. Martinez, Esq.

9 *cmartinez@americanmlg.com*

10 75 Rowland Way, Ste. 350

11 Novato, CA 94945

12 (415) 878-0030

13 (415) 878-0035

14 **Attorneys for Defendant**

15 A.K.T. American Capital, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 17, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Christian J. Martinez